

THE CITY OF CHICO

IBLA 88-311

Decided April 23, 1991

Appeal from a decision of the Redding, California, Resource Area, Bureau of Land Management, rejecting application to purchase public lands under the Recreation and Public Purposes Act. CA 20422.

Set aside and remanded.

1. Applications and Entries: Generally--Public Lands: Disposals of:
Generally--Recreation and Public Purposes Act

The Secretary of the Interior has the discretionary authority to grant an application to purchase public lands under the Recreation and Public Purposes Act, 43 U.S.C. §§ 869 to 869-4 (1988). A decision rejecting such an application for land to be used as a bicycle rest area will be set aside where BLM fails to provide a rational basis for its determination that the proposed use of the land as shown in the development and management plans for the project does not justify disposal of the land to appellant.

APPEARANCES: Fred Davis, City Manager, Chico, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

The City of Chico, California (City), has appealed from a decision of the Redding Area Manager, Bureau of Land Management (BLM), dated March 1, 1988, rejecting its application to purchase lands located in the SE¼ NE¼, sec. 10, T. 22 N., R. 2 E., Mount Diablo Meridian, Butte County, California, filed pursuant to the Recreation and Public Purposes Act (R&PP Act), 43 U.S.C. §§ 869 to 869-4 (1988).

The City filed its R&PP Act application on May 26, 1987, to purchase 40 acres of land located about 5 miles east of the Greater Chico Urban Area adjacent to California State Highway 32 to be used for a bicycle park rest area. In the Development and Improvement Plan attached to its application, the City described the intended use of the lands as follows:

Bicycle Park Rest Area for bicyclists traveling SHR 32.
It provides a magnificent overlook of Upper Bidwell Park,
with foot trails to picnic sites located on the 40-acre parcel.

Restrooms and potable water to be a part of the proposed development. No major recreational developments for this Bicycle Park Rest Area are contemplated, and except for minimum development, it is intended that this tract remain in its natural state.

(Development and Improvement Plan at 2).

The City emphasized that acquisition of the land would also protect a beautiful overlook of Upper Bidwell Park.

BLM had informed the City that it planned to use this 40-acre parcel as exchange base for land along Cache Creek in Lake County that is critical habitat for the Bald Eagle, a Federal and State endangered species and the Tule Elk, a State protected species. Even so, by letter dated April 6, 1987, the State Director, BLM advised the City that "we will accept and analyze your R&PP application" if received prior to the notice of realty action. The notice of realty action regarding this exchange, published in the Federal Register on December 28, 1987 (52 FR 48882), stated that publication of this notice in the Federal Register shall segregate the applied for public lands from all other forms of appropriation and the public land laws, including the mining laws, for a period of 2 years.

In its decision dated March 1, 1988, BLM rejected the City's R&PP Act application for the following reasons:

1. The subject lands have been segregated from appropriation under the R&PP Act by the December 28, 1987, Notice of Realty Action published in the Federal Register Volume 52 No. 248 page 48882.

2. The highest and best regional and National use is to use the lands in an exchange to acquire lands along Cache Creek in Lake County, California for Bald Eagle habitat and Tule Elk habitat, lands may be classified for exchange where they are found to be chiefly valuable for public purposes because they have special values for exchange for other lands which are needed in the support of a Federal program. The Bald Eagle is a Federal and state listed endangered species while the Tule Elk is a state protected species.

3. The proposed use does not justify the disposal of the subject lands to the City of Chico under the R&PP Act, as shown in the development and management plan.

By letter dated September 15, 1988, BLM advised the Board of certain subsequent developments affecting the City's appeal. 1/ BLM stated:

1/ BLM states that a copy of this letter was sent to Mr. Fred Davis, City Manager, City of Chico. No response from the City has been filed with the Board.

Subsequent to issuance of the March 1 decision, and the March 7, 1988, appeal of the City, the 40-acre parcel included in the City's R&PP application, described as the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, T. 22 N., R. 2 E., M.D.M., was excluded from the Cache Creek II Exchange CA 20077. As a result, there is no longer a conflicting case of record.

Therefore, reason No. 2 cited in the March 1, 1988, decision as a basis for rejecting the City's application is no longer applicable, and we request that the Board review the appeal accordingly.

We also note that with respect to reason No. 1, cited by BLM in its decision rejecting the City's application, the subject lands are no longer segregated from appropriation. Departmental regulation 43 CFR 2201.1(b) provides that the segregative effect of a notice of realty action on the public lands shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the Federal Register of a termination of the segregation or 2 years from the date of its publication, whichever occurs first. See Amelia Marglin Whitson, 101 IBLA 1, 3-4 (1988). The notice in the Federal Register also specified that the segregation would be in effect for 2 years. 52 FR 48882 (Dec. 28, 1987). Although there is nothing in the file to indicate that BLM published notification of termination of the segregation in the Federal Register, the segregation would have terminated on December 28, 1989, 2 years from the publication of the notice of segregation in the Federal Register on December 28, 1987, in accordance with 43 CFR 2201.1(b).

The remaining reason provided by BLM for rejecting the City's application is that it is not justified. In its statement of reasons the City argued that BLM should locate another parcel for the exchange. The City contends that the 40-acre parcel will provide protection to Bidwell Park, and that it should remain public because of its proximity to Bidwell Park, which is owned and operated by the City. Attached to its statement of reasons is a Butte Environmental Council letter of March 1, 1988, which sets forth additional reasons for eliminating the 40-acre parcel from the Cache Creek Exchange.

[1] The Recreation and Public Purposes Act authorizes the Secretary, in his discretion, to sell or lease tracts of national resource lands. 43 U.S.C. § 869-1 (1988); State of Utah, 83 IBLA 298 (1984); Town of Kremmling, 46 IBLA 213, 215 (1980); Board of County Commissioners, Ouray County, Colorado, 22 IBLA 182, 189 (1975). Thus, the Secretary or his duly authorized representative may reject an application without abusing his discretion if he determines that the public interest is best served by such rejection. Board of County Commissioners, Ouray County, Colorado, *supra* at 189. While our review of the record suggests that BLM had a rational basis for preferring disposal of the land for the proposed land exchange as opposed to the approval of the City's application, no reasonable explanation is contained in the record to support rejection of the

application on the singular basis that "the proposed use does not justify disposal of the subject lands to the city under the R&PP Act as shown in the Development plan."

In a supporting document identified as a land report and decision record, also dated March 1, 1988, BLM stated that even if the subject lands were not involved in an exchange, the petition-application would still be rejected as the applied-for use does not justify acquisition. BLM suggested that the City could work with Butte County to zone the skyline above Bidwell Park to protect the Park's viewshed, a more efficient method of protecting a large area than that applied for in the R&PP Act application. Also, BLM asserted that the alternative placement of the bicycle rest near the intersection of Highway 32 and Humboldt Road would service more cyclists who can more readily complete the shorter ride up Humboldt Road.

It appears that the conclusion that disposal is not justified under the R&PP Act was predetermined in light of BLM's decision to use the land for the proposed exchange. In adjudicating the application, BLM eliminated it as a means of disposal because it determined that use of the land in the exchange was the highest and best use. The land report includes the following rationale for rejection:

Rationale: The applied-for lands are classified for exchange to help acquire Bald Eagle and Tule Elk habitat and are segregated from petition under the R&PP Act. If the subject lands were not involved in an exchange to protect a threatened and endangered species, this R&PP petition would still be rejected as the applied-for use does not justify acquisition. The City of Chico can work with Butte County to zone the skyline above Bidwell Park to protect the park's viewshed, a more efficient method of protecting a large area than that applied for in the R&PP. The placement of the bicycle rest area near the intersection of Highway 32 and Humboldt Road would service more cyclists who can more readily complete the shorter ride up Humboldt Road. The subject lands would serve a higher and broader public interest when used in an exchange.

In this case, BLM determined that using the land to support the exchange was the highest and best use and concluded in the land report for the R&PP Act application that "the subject lands would serve a higher and broader interest when used in an exchange." Thus to the extent the exchange was the higher use, it could be said it was not in the public interest to act favorably on the R&PP Act application. However, as the higher and better use is no longer being pursued, the record needs further explanation to support the decision that the use proposed by the City does not justify disposal under the R&PP Act.

The record does not detail any deficiencies in the City's development plan. No discussion of the application is included in the record to show why BLM determined that approval of the application was not justified.

What is evident from the record is BLM's commitment to proceed with the land exchange, which resulted in it shortchanging the adjudication process for the R&PP Act application. In this case BLM did not make a finding that this land was unsuitable for disposal under the R&PP Act: it merely determined that this application should be rejected because it was not justified. The reasons for that conclusion should be detailed in the record.

The conclusion that disposal is not justified under the R&PP Act is a given where BLM determines that use of the land for the exchange is the highest and best use. The land, however, was subsequently excluded from the exchange and no other use has been identified as preferable to that proposed in the R&PP Act application. Under the circumstances, the record does not support the BLM determination that the proposed use of the land does not justify disposal of the land to the City as shown in the development and management plans.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside, and the case remanded for further adjudication.

Gail M. Frazier
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

